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REMARKS

This response is intended as a full and complete response to the non-final Office Action mailed September 20, 2007. In the Office Action, the Examiner notes that claims 1-10 are pending and rejected.

In view of the following discussion, Applicant submits that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicant believes that all of the claims are now in allowable form.

35 U.S.C. §103 Rejection of Claims 1-10

The Examiner has rejected claims 1-10 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,231,494 to Wachob (Wachob '494) in view of U.S. Patent 5,155,591 to Wachob (Wachob '591). The Applicant respectfully traverses the rejection.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Thus, it is impermissible to focus either on the "gist" or "core" of the invention. Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. Wachob '494 and Wachob '591, alone or in combination, fail to teach or suggest Applicant's claim 1, as a whole.

> 1. A method of delivering television programming to a plurality of subscribers using tiered video, the method comprising:
> associating a first video program with a first channel;
> associating a second video program with a second channel;
> receiving from a respective subscriber input device a channel selection chosen by each one of the plurality of subscribers;
> sending a different video program, selected at a head end via a network controller, associated with a different channel not selected by the plurality of subscribers to each television associated with the plurality of subscribers, wherein the different video program for each one of the plurality of subscribers are not the same. (Emphasis added.)

Specifically, Wachob '494 and Wachob '591, either alone or in any permissible

combination, fail to teach or suggest at least sending a different video program, selected at a head end via a network controller, associated with a different channel not selected by the plurality of subscribers to each television associated with the plurality of subscribers, wherein the different video program for each one of the plurality of subscribers are not the same, as recited in claim 1.

Wachob '494 is silent as to teaching or suggesting sending a different video program selected at a head end via a network controller. The Examiner concedes this in the Office Action. (See Office Action, p. 3, ll. 16-17). However, the Examiner asserts that Wachob '591 bridges the substantial gap left by Wachob '494. The Applicants respectfully disagree.

Wachob '591 fails to bridge the substantial gap left by Wachob '494 and appears to teach away from the Applicants' invention because Wachob '591 also fails to teach or suggest sending a different video program selected at a head end via a network controller. Wachob '591 teaches that the converter contains data indicative of a viewer's demographic characteristics. (See Wachob '591, col. 7, ll. 29-30). Then the converter determines which channel to tune to in order to receive the targeted commercials. (See *Id.* at ll. 37-39, emphasis added). The head end taught by Wachob '591 merely provides all the possible commercials to each converter. (See Wachob '591, col. 6, ll. 27-36). It does not appear that Wachob '591 teaches that it is the headend that actually selects the video program.

In stark contrast, the Applicants' invention teaches that the network controller at a head end selects the commercials to be sent to the correct audience. (See e.g., Applicants' specification, p. 14, l. 27 – p. 15, l. 2.) Consequently, the set top terminals in the Applicants' invention do not require as much processing power and may be manufactured at lower costs.

As such, Applicant submits that Wachob '494 and Wachob '591 alone or in combination fail to teach or suggest Applicant's invention as recited independent claim 1 as a whole and, therefore, Applicant's claim 1 is patentable under 35 U.S.C. §103. Independent claims 2, 4 and 8 recite relevant limitations similar to those recited in independent claim 1. Accordingly, for at least the same reasons discussed above, independent claims 2, 4 and 8 also are patentable under 35 U.S.C. §103. Furthermore,

claims 3, 5-7 and 9-10 depend directly from independent claims 2, 4 and 8, while adding additional elements. Therefore, these dependent claims also are not are patentable under 35 U.S.C. §103 for at least the same reasons discussed above in regards to independent claims 1, 2, 4 and 8.

Accordingly, Applicant respectfully requests that the Examiner's rejection be withdrawn.

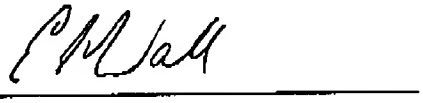
CONCLUSION

Thus, Applicant submits that none of the claims, presently in the application, are obvious under the provisions of 35 U.S.C. §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim, at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 12/19/07



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